EXHIBIT 18

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1   IN THE UNITED STATES DISTRICT COURT
            FOR THE NORTHERN DISTRICT OF OHIO
2   EASTERN DIVISION

3   IN RE: NATIONAL   : MDL No. 2804
    PRESCRIPTION OPIATE   :
4   LITIGATION   : Case No. 17-md-2804
                             :
5   APPLIES TO ALL CASES   : Hon. Dan A. Polster
                             :
6   :

7

8   HIGHLY CONFIDENTIAL

9   SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

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11   - - - -

12   JANUARY 25, 2019

13   - - - -

14   VIDEOTAPED DEPOSITION OF ROBERT A. MCCLUNE,

15 taken pursuant to notice, was held at Marcus &

16 Shapira, One Oxford Center, 35th Floor, Pittsburgh,

17 Pennsylvania 15219, by and before Ann Medis,

18 Registered Professional Reporter and Notary Public in

19 and for the Commonwealth of Pennsylvania, on Friday,

20 January 25, 2019, commencing at 9:11 a.m.

21   - - - -

22   GOLKOW LITIGATION SERVICES
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23   deps@golkow.com

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1   this, but this exhibit that we're looking at right

2   now, Exhibit 5, in terms of its content, does it

3   describe, at least in part, part of what Giant

4   Eagle was doing at some point in time in an

5   attempt to meet obligations it believed it had

6   under the 21 CFR 1301.74(b)?

7   MR. KOBRIN: Object to form.

8   THE WITNESS: In my nonlegal opinion,

9   this would be one of the aspects we used in order

10 to maintain compliance.

11 BY MR. BARTON:

12   Q.   And this aspect described in here, the

13 first sentence of the second paragraph, let's look

14 at that. "Giant Eagle has created monthly

15 ordering threshold levels for products based on

16 GPI level reporting for controlled substances."

17   Did I read that correctly?

18   A.   Yes.

19   Q.   First of all, what is GPI level?

20   A.   GPI stands for generic product

21 indicator. The level would be at which the

22 product is that level. It's organized by GPI and

23 not another level.

24   Q.   I guess I need to ask a little bit more

25 about that just to understand it.

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1   GPI level, how would GPI level help Giant

2   Eagle -- would the GPI level be used to help

3   create the threshold levels against which it was

4   comparing monthly ordering?

5   A.   Yes. Reviewing and analyzing at the GPI

6   level rather than the NDC level is the more

7   accurate way to look at any analytics regarding

8   any medication, for that matter.

9   Q.   How so? Like what's the difference

10   between the GPI level and the NDC level?

11   A.   Under a single 14-digit GPI, you'll --

12   you could have one brand NDC, which stands for

13   National Drug Code, and many generic NDCs that all

14   are therapeutically equivalent in nature.

15   Again, preface this I'm not a clinician, so

16   that may be subject to interpretation.

17   Q.   Who assigns the GPI level to a given

18   medication?

19   MR. KOBRIN: Object to form.

20   THE WITNESS: I don't know the answer to

21   that question.

22   BY MR. BARTON:

23   Q.   All I'm trying to understand -- I don't

24   think there's anything nefarious in it. I'm just

25   trying to understand what it is.

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1   A.   GPI is issued by Medi-Span.

2   Q.   And who is that?

3   A.   It's a subsidiary of Wolters Kluwer.

4   It's a data provider for the pharmaceutical

5   industry cataloging.

6   Q.   Got it. So GPI level is just a way to

7   try to identify or capture a certain class or

8   category of related products; is that fair?

9   A.   That's a fair assessment, yes.

10   Q.   And the reason it's better than NDC

11   level is NDC level -- if you were just trying to

12   count by NDC level, you might miss some generics

13   that are presumed to be therapeutically equivalent

14   and may be prescribed for the same reason as the

15   brand NDC level; right?

16   MR. KOBRIN: Object to form.

17   THE WITNESS: Again, not a clinician,

18   but yes.

19   BY MR. BARTON:

20   Q.   I think I'm following now. So GPI level

21   is better because it's hopefully more inclusive

22   than NDC level; right?

23   A.   Yes.

24   Q.   So the first sentence then, "Giant Eagle

25   has created monthly ordering threshold levels for

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1   products based on GPI level reported for

2   controlled substances," is that a statement that

3   you think accurately reflects something that Giant

4   Eagle did at some point in time?

5   A.   Again, I don't know if this document was

6   in draft form, final, or what the context was.

7   But yes.

8   Q.   And were you personally involved -- is

9   one of the things you did personally was

10   contribute to that creation of the monthly

11   ordering threshold levels for products?

12   A.   Yes, myself or my team.

13   Q.   And is that part of the programming

14   project that occurred that led to the generation

15   of the daily threshold reports?

16   A.   Again, this document was dated

17   11/16/2014. We know that the threshold, daily

18   threshold reports started in 2013 based on our

19   earlier review.

20   So this statement would refer to that or some

21   subsequent work associated to that analytics and

22   reporting.

23   Q.   Yeah. Absolutely fair enough. And I'm

24   not trying to suggest that it only happened in

25   November of 2014. I'm actually not concerned --

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1   the store to the company average, you're not

2   comparing that store to itself; right?

3   A.   Correct.

4   Q.   So, for example, if you had a small

5   store relative to the company average -- and there

6   were such stores, I assume, in the Giant Eagle

7   system; right?

8   MR. KOBRIN: Object to form.

9   THE WITNESS: I'd have to see the data,

10 but you're going to have some high-performing and

11 lower-performing stores.

12 BY MR. BARTON:

13   Q.   So if you had a smaller store relative

14 to company average, then always comparing that

15 store's orders to the company average might never

16 reveal a pattern occurring within that store's

17 orders that might deviate or change, but never

18 reach the threshold.

19   That could happen; right?

20   MR. KOBRIN: Object to form.

21   THE WITNESS: There are still other

22 processes in place that would catch those

23 abnormalities. This check was just an additional

24 redundant check.

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[1/25/2019] McClune012519